



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MAHH
ATTORNEY GENERAL

Honorable Sam B. Hall
County Attorney
Harrison County
Marshall, Texas

Dear Sir:

Attention: Mr. Robert M. Sikes

Opinion Number O-5453
Re: Maintenance tax of independent school district
created by Special Act.

We have received your letter of June 22, 1943, which we quote in part as follows:

"We respectfully request your opinion as to whether the Washom Independent School District, of Harrison County, can legally hold an election to raise the maintenance tax of said District, not to exceed \$1.00 on a \$100.00 valuation of taxable property in said District.

"The Washom Independent School District was created by a special law of the 36th. Regular Session of the Legislature in 1919, Chapter 7, same being H. B. 125, a copy of which is attached hereto for your convenience. Section 4 of this act provides for an annual ad valorem tax not to exceed 50¢ on a \$100.00 valuation for maintenance, and a tax not to exceed 25¢ on a \$100.00 valuation for purchase of sites and construction of buildings, and that the amount of maintenance tax, together with the amount of bond tax shall never exceed 50¢ on a \$100.00 valuation. The act provides for the elections and tax levies and collections in the same manner as is provided for by the General Law on Independent School Districts. Section 25 of the Act provides that:

Honorable Sam B. Hall, page #2

" . . . all laws hereafter to be, or which may be enacted, and which have for their purposes the enlargement and increasing of rate of maintenance tax or bond tax, or maintenance and bond tax, together with the power in relation to the assessment and collection of taxes therefor and thereof, whether said law or laws be for independent school districts created by special legislative Act or under the General laws of Texas, and all laws, hereafter to be enacted enlarging and increasing the powers and authorities of the trustees under the General Laws of this State, shall apply to and the same is and hereby shall be cumulative of this Act, and especially of Sections 3 and 4 hereof."

"It is noted that in Article 2857 of Vernon's Sayles Texas Civil Statutes, 1914, same being the amended acts of 1909, page 17, Section 154, that the trustees of Independent School Districts are given power to levy an ad valorem tax for maintenance purposes, not to exceed 50¢ on a \$100.00 valuation, and a tax not to exceed 25¢ on a \$100.00 valuation for purchase of sites and buildings. Article 2784 of Vernon's Revised Civil Statutes, 1925, authorizes a maintenance tax of \$1.00 on a \$100.00 valuation. It is noted that this is an Act of 1921.

"There is further legislation on the subject found in Vernon's Texas Session Law Service, where the 48th Legislature of 1943, Chapter 17, validated all acts and proceedings in connection with maintenance tax elections, not to exceed \$1.50 on each \$100.00 valuation; and in Section 2 authorizes the trustees to call an election raising the tax not to exceed \$1.50.

Honorable Sam B. Hall, page #3

"Section 26 of the Waskom School Law, provides as follows:

" 'This Act shall be taken notice of by all the courts in the same manner as the General Laws of this State, and it shall be construed to be cumulative of all of the General Laws of this State on the subject of schools, when not in conflict therewith, but in case of conflict this Act shall control as to the Waskom Independent School District, here created, and should any Sections of this Act, or any part of any Section or Sections of this Act, be held to be void and without force or effect, for any reason whatsoever by any court of competent jurisdiction and having final jurisdiction thereof, then the remaining portions of this Act shall not be thereby affected; but shall remain in full force and effect as though the void or unenforceable portion thereof, if any, had not been incorporated into this Act.'

"It is noted that the tax rate provided for in the special Act creating the Waskom District was the same as the tax rate provided for under the General law by the Acts of 1909, above referred to."

Article 2784, Revised Civil Statutes of Texas, provides in part as follows:

"The commissioners court for the common school districts in its county, and the district school trustees for the independent school districts incorporated for school purposes only, shall have power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions:

"1. In common school districts, for the further maintenance of public free schools and the

Honorable Sam B. Hall, page #4

erection and equipment of school buildings therein, a special tax; and in independent districts for the maintenance of schools therein, an ad valorem tax, not to exceed one dollar on the one hundred dollars valuation of taxable property of the district.

"2. In common school and independent districts, for the purchase, construction, repair and equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax not to exceed fifty cents on the one hundred dollars valuation, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes.

"3. The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed one dollar on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed one dollar on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and one dollar.

"4. No tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax paying qualified voters of such district shall be entitled to vote."

Article 2734 was codified in 1925 from several previously enacted statutes, one of which was Article 2857, Revised Statutes of 1911. Article 2857 was amended in 1921 by

Honorable Sam B. Hall, page #5

House Bill 118, Chapter 24, Acts 37th Legislature, Regular Session. (See Section 13 of House Bill No. 116). Article 2357, after its amendment, read as follows:

"The trustees of any independent school district that has been, or may hereafter be incorporated under general or special laws, for school purposes only, shall have the power to levy and collect an annual ad valorem tax not to exceed one dollar on the one hundred dollars valuation of taxable property of the district, for the maintenance of schools therein, and a tax not to exceed fifty cents on the one hundred dollars for the purpose of purchasing, constructing, repairing, or equipping public free school buildings within the limits of such district, and the purchase of the necessary sites therefor; provided, that the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed one dollar on the one hundred dollars valuation of taxable property; and provided further that no such tax shall be levied, and no such bonds issued, until after an election shall have been held wherein a majority of the taxpaying voters, voting at said election, shall have voted in favor of the levying of said tax, or the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the subsequent sections of this Act." (Emphasis supplied).

You will see that the Act applied to any independent school district whether created by general or special law, and authorizes the levying of a tax not to exceed one dollar on the hundred dollars valuation of taxable property. It necessarily follows, therefore, that the provisions in House Bill No. 125, creating the Waskom Independent School District, which limited the total tax to 50¢, was repealed, and the increased tax would be authorized upon a majority vote cast by the qualified taxpaying voters at an election held therefor.

Honorable Sam B. Hall, page #6

As we have heretofore mentioned, Article 2784 of the 1925 revision is taken from several previously enacted statutes among which was Article 2857, Revised Statutes of 1911, as amended.

Article 2784 authorizes "in independent school districts for the maintenance of schools therein, an ad valorem tax, not to exceed one dollar on the one hundred dollars valuation of taxable property of the district." You are, therefore, advised that the trustees of the Waskom Independent School District may levy a maintenance tax of not more than one dollar, provided, of course, the same is authorized at an election called and held under the provisions of Articles 2784 and 2785, Vernon's Annotated Civil Statutes.

You mention in your letter Chapter 17 of the Acts of the 48th Legislature, Regular Session. This Act validates elections held in an independent school district at which a maintenance tax not to exceed \$1.50 on each one hundred dollars of assessed valuation had been voted upon and purportedly authorized. An examination of this Act reveals that it is nothing more than a validating Act and in no way attempts to authorize an increased tax except when the same is based on an election held prior to the passage of the Act. Section 2 reads in part as follows:

"Sec. 2. All such School Districts, where the vote has heretofore been in favor of levying such maintenance tax shall have the power and authority to levy, assess and collect taxes at not to exceed the following rates per one hundred dollars of assessed valuation of taxable property, to wit:

" * * * * " (Emphasis supplied).

You are, therefore, further advised that the maximum maintenance tax which under the general law is authorized to be voted and levied in an independent school district is \$1.00

Honorable Sam B. Hall, page #7

on each one hundred dollars of assessed valuation. Article 2734, supra.

Very truly yours

APPROVED JUL 17, 1943

ATTORNEY GENERAL OF TEXAS

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By *George W. Sparks*
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GWS-s

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C.C.R.

